and that PTI has access to funding sources and interest rates not available to U S WEST and a long-term commitment to the rural telecommunications market. U S WEST notes the characteristics and geographic location of the transfer properties match-up well with local exchanges currently served by PTI. U S WEST submitted with its application exhibits regarding its financial condition and outstanding securities.

On June 17, 1994, the Commission requested a statement of position from PTI and Commission Staff on the PTI petition for declaratory order on rate base treatment of the sale exchanges. The parties filed their statements of position on July 29, 1994.

A September 26, 1994 Order of the Commission consolidated the two filings. A prehearing conference was held October 14, 1994, at which time PTI and U S WEST submitted their pre-filed testimony. At the request of the parties, the Commission convened a settlement conference on January 26, 1995, which was recessed for an indeterminate period to permit the parties to resolve issues.

As a result of those negotiations, the parties reached an agreement on appropriate conditions for the sale and transfer. On February 17, 1995, a Settlement Agreement signed by PTI, U S WEST, Commission Staff, Public Counsel, and WITA was filed with the Commission. Intervenors MCI, AT&T, and GTE-NW notified the Commission they did not oppose the proposed agreement. All parties waived the requirement of an initial order.

At a February 21, 1995 hearing, the signatories to the Settlement Agreement represented its provisions to the Commission. The Commission then took testimony from customers of both companies on the proposed sale and transfer at public hearings on March 6, in Ritzville, March 7, in Ashford, and March 9, 1995, in Raymond.

In response to concerns voiced at the public hearings, the signatories to the Settlement Agreement entered into further negotiations. On April 11, 1995, the signatories filed an Addendum to the Settlement Agreement specifically addressing the concerns raised by customers at those hearings.

II. <u>SETTLEMENT AGREEMENT</u>

The proposed Settlement Agreement[1] contains the following primary provisions:

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[1] The Settlement Agreement is Exhibit 501 in this record. The Settlement Agreement and Addendum are incorporated into the Order by this reference and a copy is attached as Appendix A.

- the parties agree PTI is technically and financially qualified to operate the subject properties;

- the parties agree the transfer pursuant to chapter 80.12 RCW is in the public interest and recommend the Commission approve the transfer, under the terms and conditions contained in the Settlement Agreement;

- PTI agrees to freeze local rates in the sale exchanges at current U S WEST rates for two years, while continuing to provide all customers in the sale exchanges with all services currently provisioned. After two years, rates will be increased gradually over the next three years to appropriate PTI rate levels;

- PTI agrees to spend $25 million over the next five years to upgrade plant in the sale exchanges. The upgrades will include the provision of Signaling System 7 (SS7) and Custom Local Area Signalling Services (CLASS) in those exchanges;

- during the first two years after the sale, PTI will endeavor to bring the sale exchanges into compliance with Commission service quality rules. Any exchanges not brought into compliance after the two-year period will not be subject to a rate increase until it is brought into compliance;

- PTI will eliminate foreign exchange services to Paradise Estates customers in the Ashford exchange. PTI will file an extended area service study for the exchange cluster which includes Ritzville, Benge, Lind, and Washtucna;

- with regard to PTI's existing customer base, PTI agrees not to seek any rate increase due to the purchase of these exchanges for a period of five years; PTI will file for rate decreases during the last three years of the five year period if its earnings exceed its authorized rate of return;

- with regard to U S WEST's existing customers, U S WEST agrees to increase intrastate depreciation reserves by $16.6 million and to undertake $4.1 million in rural service and infrastructure improvements;

- U S WEST will file tariff revisions to reduce switched carrier access charges by more than $1 million in its general rate case; and

- PTI will record the sale properties on its books at net book value. PTI will not recover any of the sale price above net book value from regulated operations.

U S WEST agrees to locate three new portable generators within the exchange to back-up U S WEST's batteries in the area.

At the Raymond public hearing, the Pacific County Board of Commissioners expressed concern that rates would increase under PTI. The boundary between two long distance calling areas (local access and transport area or LATA) divides Pacific County. The County has installed a microwave system to avoid paying the higher long distance charges resulting from the placement of the LATA boundary. County officials are concerned that PTI might apply access charges to the calls from its facilities in northern Pacific County, which U S WEST currently does not assess. In the Addendum, PTI agrees to continue to provide service under the same U S WEST terms and conditions after the sale.

Letters were submitted by customers unable to attend the public hearings. Many customers indicated they did not have sufficient information about the sale to comment in detail, with some opposing the sale of exchanges generally and others expressing concern that service quality would deteriorate after sale to PTI.

Many customer concerns are addressed by the Settlement Agreement and Addendum. Those customers concerned that EAS boundaries will be shrunk have been assured that the current EAS routes will continue to be provisioned after the sale.

Several customers asked the Commission to guarantee rates after the sale to PTI would never exceed those charged by U S WEST. The Commission cannot make such a guarantee. The Settlement Agreement provides for a two-year rate freeze. Thereafter, rates for PTI customers will be set on the basis of that company's costs of doing business, rate base, and authorized rate of return. The Commission notes U S WEST recently filed for a general rate increase. The Commission cannot predict what rate levels will be for either company two years into the future.

The Commission notes that PTI has committed to investing at least $25 million in capital improvements in the sale exchanges during the first five years following the sale. At the public hearings, PTI described its plans for plant investment in those service territories. For example, PTI indicated it will invest $1.4 million in the Ritzville exchange, $800,000 in the Ashford exchange, and $3.7 million in the Raymond and South Bend exchanges, in the five years post-sale.[3] This investment is expected to provide service quality improvements in the sale exchanges.

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[3] These dollar amounts are contained in Exhibits 505, 506, and 507. Those exhibits also describe PTI's plans for system upgrades and modernization.

Finally, the Settlement Agreement provides for periodic reporting to the Commission on service quality in areas not currently meeting Commission service standards. The Commission intends to scrutinize these reports and to closely monitor the level of service being provided.

In sum, the Commission finds the sale of exchanges to be in the public interest, under the terms and conditions contained in the Settlement Agreement and Addendum. The Commission appreciates the level of input and interest shown by customers in the sale exchanges. That input has led to agreements which should improve the level of service quality for all customers. The Commission commends the efforts of the parties in bringing these issues to a quick and satisfactory resolution.

FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with authority to regulate rates, services, facilities, practices, rules, accounts, and transfers of public service companies, including telecommunications companies.

2. Petitioner Telephone Utilities of Washington, Inc. d/b/a PTI Communications (PTI) and applicant U S WEST Communications, Inc. (U S WEST) are engaged in the business of furnishing intrastate telecommunications services to customers within the state of Washington as public service companies.

3. On May 20, 1994, PTI and U S WEST submitted two filings regarding the sale of twenty-seven local exchanges and one wire center. PTI filed a petition seeking an order authorizing the purchase of U S WEST assets, and U S WEST filed an application to transfer this property. The Commission ordered consolidation of the petition and application on September 26, 1994.

4. On February 17, 1995, the parties filed a Settlement Agreement in full and complete settlement of the issues presented in these consolidated proceedings. The parties presented their settlement to the Commission at a hearing on February 21, 1995. The agreement was signed by PTI, U S WEST, Commission Staff, Public Counsel, and WITA. Other intervenor parties notified the Commission they did not oppose the proposed settlement.

5. After hearings for public comment on March 6, 7, and 9, 1995, the signatories filed an Addendum to the Settlement Agreement. The Addendum addresses customer concerns voiced at the public hearings. A copy of the Settlement Agreement and Addendum is attached to this order as Appendix A.

6. On or about April 12, 1995, the signatories submitted the response to informal Commission Staff Data Request No. ATG 01-037, and requested that the document be entered as Exhibit 508. The document is so entered.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and parties.

2. The Settlement Agreement and Addendum is consistent with the public interest and its terms and conditions resolving all issues in this consolidated proceeding should be accepted.

3. The sale of exchanges should be approved, subject to the terms and conditions of the Settlement Agreement and Addendum.

ORDER

THE COMMISSION ORDERS:

1. The Settlement Agreement and Addendum is accepted;

2. The sale of exchanges is approved, subject to the terms of the Settlement Agreement and Addendum; and

3. The Commission retains jurisdiction to effectuate the provisions of this Order, including the terms and conditions of the Settlement Agreement and Addendum.

DATED at Olympia, Washington, and effective this 7th day of May 1995.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson

SHARON L. NELSON, Chairman

Richard Hemstad

RICHARD HEMSTAD, Commissioner

Wm. R. Gillis

WILLIAM R. GILLIS, Commissioner

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSI

In the Matter of the Petition of TELEPHONE UTILITIES OF WASHINGTON, INC., d/b/a PTI COMMUNICATIONS for an Order Authorizing the Purchase of Property and for Declaratory Order on Rate Base Treatment.	No. UT-940700
In the Matter of the Application of U S WEST Communications, Inc. to Transfer Property to Telephone Utilities of Washington, Inc., d/b/a PTI Communications	No. UT-940701 SETTLEMENT AGREEMENT

In full and complete settlement of the issues presented these consolidated dockets the parties stipulate and agree t Settlement Agreement as follows:

I. STATEMENT OF THE PROCEEDING AND POSITIONS OF PARTIES

On May 20, 1994 U S West Communications, Inc. (USWC) an Telephone Utilities of Washington, Inc., D/B/A PTI Communica (PTI) filed reciprocal Petitions pursuant to RCW Chapter 80. USWC to sell and PTI to purchase and operate 28 exchanges ar wire centers in the State of Washington. The Commission

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Other parties reserve the right to propose and advocate alternative methods of offset. PTI will cap traffic sensitive access charges for a period of five years after the sale.

10. PTI will file access tariff revisions to restructure local transport service ("LTR") rates within 90 days following sale. Such LTR will not include a Residual Interconnection Ch ("RIC"). The LTR will either be revenue neutral or constitute reduction in local transport charges.

11. No later than 90 days after the sale, PTI will prepa and submit to the Staff and Public Counsel a report identifyi the probable primary causes of trouble reports and held order those sale exchanges not currently meeting WUTC service stand For a period of two years following the sale PTI will separat track capital expenditures in the purchased exchanges and wil submit semiannual reports summarizing such expenditures by exchange. The two year local rate freeze referenced in Paragraph 9 above shall continue in any of the subject exchan not meeting WUTC service standards within two years after the sale. Such freeze shall continue in place until the service standards are met.

12. PTI will invest at least $25 million in capital improvements in the purchased exchanges during the first five years after purchase for system upgrades and integration wit PTI's network. PTI will direct this investment with the int eliminating the trouble report and held order problems withi

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first two years. PTI will file for a modification of the exchan boundary between the Mineral and Ashford exchanges such that customers in the Paradise Estates area will begin to receive Ashford local exchange service without imposition of foreign exchange charges.

13. PTI will submit calling pattern data and conduct a st for potential EAS conversion for the routes from Benge to Ritzville, Washtucna, and Lind.

14. The parties agree to recommend to the Commission by statement and testimony as appropriate that this agreement be adopted in its entirety without change as a resolution of the issues presented. The parties however, recognize that the Commission has yet to hear from members of the general public i the public hearings presently scheduled for March 6, 7, and 9, 1995. It is acknowledged that Public Counsel will assist membe of the public in advocating their concerns to the Commission. parties agree that the Commission may consider requiring additional, limited action by USWC and PTI to address specific service problems that may become apparent from testimony of consumers at the public hearings, and in that event the agreeme would not be considered void by any party.

15. If the Commission declines to accept and approve the agreement in its entirety, with the limited exception stated i paragraph 14, each party hereto withdraws its agreement to set and may elect to proceed to hearings on all the issues present

U S WEST, In
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
US West Communications, Inc.,	)	
Pacific Telecom, Inc. and Telephone	)	
Utilities of Eastern Oregon, Inc.	)	DA 95-1783
	)	
Joint Petition for Waiver of Section 61.41(c)(2)	)	AAD 94-69
and the Definition of "Study Area"	)	
Contained in the Part 36 Appendix-Glossary	)	
of the Commission's Rules	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 10, 1995 Released: August 11, 1995

By the Chief, Accounting and Audits Division:

I. INTRODUCTION

1. On June 9, 1994, US West Communications, Inc. ("US West"), Pacific Telecom, Inc. ("PTI") and Telephone Utilities of Eastern Oregon, Inc. ("Eastern Oregon") (collectively, "Petitioners") filed a joint petition for waiver ("Joint Petition") of two commission rules. US West and PTI both seek a waiver of the definition of "Study Area" contained in the Part 36 Appendix-Glossary of the Commission's rules. That definition constitutes a rule freezing all study area boundaries. The requested waivers would allow US West and PTI to alter the boundaries of their Oregon study areas when transferring 23 telephone exchanges from US West to PTI. In addition, PTI and its wholly owned subsidiary, Eastern Oregon, seek waivers of the price cap rule contained in Section 61.41(c)(2) of the Commission's rules.[1] That rule requires non-price cap companies--and the telephone companies with which they are affiliated--to become subject to price cap regulation after acquiring a price cap company or any part thereof. The requested waiver would permit Eastern Oregon and the other affiliates of PTI to remain under rate-of-return regulation after Eastern Oregon acquires the 23 exchanges which currently are under price cap regulation.

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[1] PTI owns two operating telephone companies in Oregon: Telephone Utilities of Oregon, Inc. and Telephone Utilities of Eastern Oregon, Inc. Both companies operate under the name PTI Communications, Inc. and share a single study area.

2. On July 12, 1994, the Common Carrier Bureau ("Bureau") released a public notice soliciting comments on the Joint Petition.[2] The Bureau received comments supporting the Joint Petition from two parties: the National Exchange Carrier Association, Inc. ("NECA") and the United States Telephone Association ("USTA"). At the request of Bureau staff, Petitioners provided additional financial and cost data concerning the Joint Petition.[3] In this Order, we find that the public interest would be served by allowing PTI and US West to alter their study area boundaries and allowing PTI and Eastern Oregon to continue operating under rate-of-return regulation after acquiring the 23 exchanges. We therefore grant the Joint Petition, as conditioned and explained more fully below.

II. STUDY AREA WAIVERS

3. ***Background.*** A study area is a geographical segment of a carrier's telephone operations. Generally, a study area corresponds to a carrier's entire service territory within a state. Thus, carriers operating in more than one state typically have one study area for each state, and carriers operating in a single state typically have a single study area. Study area boundaries are important primarily because carriers perform jurisdictional separations at the study area level.[4] For jurisdictional separations purposes, the Commission froze all study area boundaries effective November 15, 1984.[5] The Commission took that action primarily to ensure that local exchange carriers ("LECs") do not set up high-cost exchanges within their existing service territories as separate study areas to maximize high-cost payments.[6] The study area freeze also prevents LECs from transferring exchanges among existing study areas for the purpose of increasing interstate revenue requirements and compensation. A LEC must apply to the Commission for a waiver of

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[2] Public Notice, 9 FCC Rcd 3302 (Com. Car. Bur. 1994).

[3] Letter from Lawrence Sarjeant, US West, to Kathleen Wallman, Chief, Common Carrier Bureau, FCC, dated Jan. 24, 1995 ("US West Jan. 24 Letter"); letter from Brian D. Thomas, Pacific Telecom, Inc., to Adrian Wright, Accounting & Audits Div., FCC, dated May 2, 1995 ("PTI May 2 Letter"); letter from Michael Crumling, US West, to William Caton, Acting Secretary, FCC, dated June 12, 1995 ("US West June 12 Letter"); letter from Teresa Baer, Latham & Watkins, to Charles Needy, Accounting & Audits Div., FCC, dated Aug. 3, 1995 ("PTI Aug. 3 Letter").

[4] The phrase "jurisdictional separations," or "separations," refers to the process of dividing costs and revenues between a carrier's state and interstate operations. *See generally* 47 C.F.R. §§ 36.1-36.741.

[5] 47 C.F.R., Part 36, Appendix-Glossary, definition of "Study Area" (1993). *See* MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325 (Dec. 12, 1984) (*1984 Joint Board Recommended Decision*), adopted by the Commission, 50 Fed. Reg. 939 (Jan. 8, 1985) (*1985 Order Adopting Recommendation*). *See also* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990) (*Study Area Notice*).

[6] *See 1985 Order Adopting Recommendation*, 50 Fed. Reg. 939, 940. *Also see 1984 Joint Board Recommended Decision*, 49 Fed. Reg. 48325, 48337.

the frozen study area rule if the LEC wishes to sell an exchange to another carrier and if that transaction would have the effect of changing the study area boundaries of either carrier.[7]

4. Waiver of Commission rules is appropriate only if special circumstances warrant deviation from the general rule[8] and such a deviation will serve the public interest.[9] In evaluating petitions seeking a waiver of the rule freezing study area boundaries, the Commission employs a three-prong standard:[10] first, that the change in study area boundaries does not adversely affect the Universal Service Fund ("USF") support program;[11] second, that the state commission(s) having regulatory authority over the exchange(s) to be transferred does not object to the change; and third, that the public interest supports such a change. In evaluating whether the change would adversely affect the USF, the Commission applies a "one percent" guideline to study area waiver requests filed after January 5, 1995.[12] This guideline does not apply in the instant case because Petitioners filed before that date.

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7 47 C.F.R. Part 36, Appendix-Glossary. *See also* 47 C.F.R. § 1.3.

8 *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

9 *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

10 *See* US West Communications, Inc., and Eagle Telecommunications, Inc., Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 10 FCC Rcd 1771 (1995) (*US West-Eagle Study Area Order*) at ¶ 5.

11 *See 1984 Joint Board Recommended Decision*, 49 Fed. Reg. at 48337, ¶ 66. The Commission created the USF to preserve and promote universal service. *See* Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, 96 FCC 2d 781 (1984). The USF allows LECs with high local loop plant costs to allocate a portion of those costs to the interstate jurisdiction, thus enabling the states to establish lower local exchange rates in study areas receiving such assistance. To determine which LEC study areas are eligible for USF support, the USF rules prescribe an eligibility threshold set at 115 percent of the national average unseparated loop cost per working loop. When loop cost in a particular study area exceeds that threshold, the study area is eligible for support equal to a certain percentage of the loop cost in excess of that threshold. The study area becomes eligible for higher levels of support as its loop cost rises above additional thresholds set farther above the national average unseparated loop cost. Because USF assistance is targeted primarily at small study areas, the level of support provided at each threshold generally is greater if the study area has 200,000 or fewer working loops. *See* 47 C.F.R. § 36.631.

12 The Commission stated that no waiver of the rule freezing study area boundaries should result in an annual aggregate shift in USF assistance in an amount equal to or greater than one percent of the total USF, unless the parties can demonstrate extraordinary public interest benefit. The USF effect for the year must be computed on an annualized basis. To prevent carriers from evading this limitation by disaggregating a single large sale of exchanges into a series of smaller transactions that in the aggregate have the same effect on the USF, the Commission further requires that the "one percent" guideline be applied to all study area waivers granted to either carrier, as a purchaser or seller, pending completion of the current review of the USF program. In this context, the Commission defines the term "carrier" to include all affiliated carriers (i.e., those carriers that are in common control, as the term "control" is defined in Section 32.9000 of the Commission's rules, 47 C.F.R. § 32.9000). *See US West-Eagle Study Area Order* at ¶¶ 14-17.

5. ***Petition.*** According to Petitioners, US West seeks a waiver of the rule freezing study area boundaries to enable it to remove 23 exchanges, which serve approximately 16,000 access lines, from its Oregon study area, which serves approximately 1,120,890 access lines. PTI seeks a similar waiver to enable it to add these 23 exchanges to its existing Oregon study area, which currently consists of 23 exchanges serving approximately 46,427 access lines. Petitioners further state that all of the transferred exchanges would be operated by Eastern Oregon, a wholly owned subsidiary of PTI.[13]

6. Petitioners assert that these requests are consistent with the original purpose of the USF and that the resulting impact on the USF would be marginal. Petitioners state that US West's Oregon study area currently receives no USF assistance and would receive no such assistance after the transfer.[14] PTI estimates that, if the study area waivers were granted, the transfer of the 23 exchanges would result in an increase of $5,943,894 (or approximately 107 percent) in the USF draw of PTI's Oregon study area. Such an increase would raise that study area's USF draw from its current level of $5,574,865 to $11,518,884.[15] Petitioners further assert that the proposed change would serve the public interest because Eastern Oregon would improve customer service in the newly acquired exchanges by constructing new digital central offices that would provide the latest signalling technology.[16] PTI estimates that these upgrades would require an investment outlay of approximately $24,000,000 over a five-year period.[17]

7. ***Discussion.*** Petitioners' proposals demonstrate that current and potential customers in the affected exchanges will likely be better served by Eastern Oregon than US West. Petitioners state that Eastern Oregon would install state-of-the-art technology that would enable it to provide single-line service to customers now served by party lines and provide enhanced digital services to all customers.[18] We thus believe the transfer of these exchanges, which has been approved by the Public Utility Commission of Oregon ("Oregon PUC"),[19] likely will serve

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[13] Joint Petition at 1, 5. We obtained the number of access lines for the Oregon study areas of PTI and US West from the National Exchange Carrier Association's Annual USF Report submitted to the Commission in September 1994.

[14] Joint Petition at 5-7.

[15] PTI May 2 Letter.

[16] Joint Petition at 5.

[17] PTI Aug. 3 Letter.

[18] Joint Petition at 5.

[19] The Oregon PUC approved the proposed exchange transfer if PTI and US West accept certain conditions. *See* Public Utility Commission of Oregon Order, Order No. 95-526, Joint Application of US West Communications, Inc., and Telephone Utilities of Eastern Oregon, Inc., d/b/a PTI Communications, for an Order Authorizing the Sale and Purchase of Certain Telephone Exchanges, adopted May 31, 1995. PTI and US West state that they have agreed to those conditions. *See* US West June 12 Letter at Attachment.

the public interest. In addition, we have determined that the increase of $5,943,894 in the USF draw of Eastern Oregon would not have a significant adverse effect on the USF. We therefore find that the three existing criteria for granting a study area waiver have been met in this instance and that the waiver requests should be granted.

8. Although we find no reason to question Eastern Oregon's estimates of the USF impact, we nonetheless are concerned that those estimates may later prove inaccurate when the planned upgrades are completed. We have found that, even in a period of a few years, the USF payments for some LECs have risen by unexpected amounts. These LECs generally had undertaken substantial upgrades or expansions of the local network in difficult-to-serve, sparsely populated exchanges that are similar to the exchanges being acquired by Eastern Oregon.[20] Moreover, we are concerned that this sale and a number of similar proposed transactions might, in the aggregate, have a substantial effect on the size of the USF and on those high-cost LECs that draw from the USF.

9. This concern has been mitigated, in the short term at least, by the Commission's adoption of the Joint Board's recommendation for an indexed cap on the USF.[21] Yet, even in the short term, unidentified errors contained in Eastern Oregon's impact estimates may adversely affect the fund's distribution, if not its size. Under the indexed USF cap rules, any study area reconfiguration that increases the USF draw of one USF recipient reduces that of other USF recipients. Hence, if Eastern Oregon's estimate proves to be too low, the support provided to other USF recipients could be lowered by an amount that does have a material impact. We therefore find that the waivers should be subject to the condition that the annual USF support provided to the PTI study area shall not exceed $11,518,848, the post-transfer and post-upgrade amount estimated in the PTI May 2 Letter.[22] The limit imposed by this condition is consistent

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[20] *See, e.g.,* Delta Telephone Company, 5 FCC Rcd 7100 (1990), whose USF payment grew from $82,500 in 1991 to approximately $445,700 in 1993; and US West and Gila River Telecommunications, Inc., 7 FCC Rcd 2161 (1992), whose projection of $169,155 for Gila River's 1992 USF payment was more than doubled by the actual 1992 payment of $390,993, which has been nearly doubled again by the 1995 scheduled payment of approximately $750,000.

[21] The Joint Board recommended, and the Commission adopted, interim rules that will limit the rate of growth of the USF to the rate of growth in the total number of working loops nationwide. That rate of growth has generally ranged from two percent to five percent per year. This moderate growth rate will allow the USF to continue to provide adequate support to carriers serving high-cost areas, while preventing excessive increases in the USF. *See generally* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, 9 FCC Rcd 334 (1993)("*1993 Joint Board Recommended Decision*"), adopted by the Commission, 9 FCC Rcd 303 (*"Interim Cap Order"*). To determine whether permanent changes in the USF rules are necessary, the Commission subsequently initiated a proceeding to address this issue. *See* Notice of Inquiry, CC Docket No. 80-286, 9 FCC Rcd 7404 (1994); Notice of Proposed Rulemaking, CC Docket No. 80-286, FCC 95-282 (released July 13, 1995).

[22] The imposition of a limit does not imply that the USF draw for PTI's Oregon study area will necessarily increase to that level. PTI developed the $11,518,848 estimate by comparing the 1993 nationwide average loop cost to the average loop cost of its Oregon study area, assuming that both the transfer and the $24,000,000 of upgrades are already complete. Yet, because the upgrade program is estimated to require five years, the nationwide average

with PTI's representations as to the expected impact of the proposed changes on the annual USF payments it receives. This condition therefore will ensure that the study area waivers will not result in adverse effects on the USF program that exceed PTI's forecasts.[23]

III. PRICE CAPS WAIVER

10. *Background.* Section 61.41(c)(2) of the Commission's rules provides that, when a non-price cap company acquires a price cap company, the acquiring company--and any LEC with which it is affiliated--shall become subject to price cap regulation within a year of the transaction.[24] The Commission stated that this "all-or-nothing" rule applies not only to the acquisition of an entire LEC but also to the acquisition of part of a study area.[25] Hence, under this rule, Eastern Oregon's acquisition of US West's 23 exchanges obligates Eastern Oregon and its parent, PTI, to become subject to price cap regulation instead of rate-of-return regulation.

11. The Commission explained that the all-or-nothing rule is intended to address two concerns it has regarding mergers and acquisitions involving price cap LECs. The first concern is that, in the absence of the rule, a company might attempt to shift costs from its price cap

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loop cost may be substantially higher--due to upgrades by other LECs and inflation--when PTI's upgrades are actually completed. Thus, PTI's estimate is based on cost data that may overstate the amount by which its loop costs will exceed the nationwide average. Further, under the interim USF rules, a lag of up to two years exists between the time that a LEC incurs additional loop costs and the time that its study area receives additional USF assistance reflecting those higher costs. *See* 47 C.F.R. §§ 36.611-36.612. The existence of this lag time means that the current USF rules may be replaced with new rules, as discussed *supra* at note 21, even before the initial stage of upgrades planned by PTI would cause increased USF payments to the PTI study area. Those new permanent USF rules may alter the method used to determine the distribution of USF support to high-cost areas, thereby changing the projected level of support to the PTI study area.

[23] These study area waivers also are subject to the condition that, if the selling LEC is a price cap carrier selling a high-cost portion of its operations, it shall make a downward exogenous adjustment to its Price Cap Index to reflect the change in its study area boundaries. *See* Price Cap Performance Review for Local Exchange Carriers, First Report and Order, CC Docket No. 94-1, FCC 95-132, released April 7, 1995 (*"LEC Price Cap Review Order"*), at ¶¶ 328 and 330. Under that requirement, US West must reduce the Price Cap Index for its Oregon study area if the change in study area boundaries reduces the cost basis for that index. The Price Cap Index, which is the cost index on which price-capped rates are based, is calculated pursuant to a formula specified in the Commission's rules for price cap LECs. *See* 47 C.F.R. § 61.45.

[24] 47 C.F.R. § 61.41(c). *See* Second Report and Order, 5 FCC Rcd 6786, 6821 (1990) and Erratum, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), *modified on recon.* 6 FCC Rcd 2637 (1991) (*LEC Price Cap Reconsideration Order*), *petitions for further recon. dismissed*, 6 FCC Rcd 7482 (1991), *aff'd*, *National Rural Telecom Assoc. v. FCC*, 988 F.2d 174 (D.C. Cir. 1993), *further modification on recon.*, 6 FCC Rcd 4524 (1991)(*ONA Part 69 Order*), *second further recon.*, 7 FCC Rcd 5235 (1992).

[25] The Commission explained that, if these two types of acquisitions were not treated the same under the all-or-nothing rule, a LEC could avoid the rule by selling all but one of its exchanges. *See LEC Price Cap Reconsideration Order*, 6 FCC Rcd 2637, 2706.

affiliate to its non-price cap affiliate, allowing the non-price cap affiliate to earn more--due to its increased revenue requirement--without affecting the earnings of the price cap affiliate, i.e., without triggering the sharing mechanism. The second concern is that, absent the rule, a LEC may attempt to "game the system" by switching back and forth between rate-of-return regulation and price cap regulation. The Commission cited, as an example, the incentive a price cap LEC may have to increase earnings by opting out of price cap regulation, building up a large rate base under rate-of-return regulation so as to raise rates and, then, after returning to price caps, cutting costs back to an efficient level. It would disserve the public interest, the Commission stated, to allow a LEC to alternately "fatten up" under rate-of-return regulation and "slim down" under price caps regulation, because rates would not fall in the manner intended under price cap regulation.[26]

12. The Commission nonetheless recognized that a narrow waiver of the all-or-nothing rule might be justified if efficiencies created by the purchase and sale of a few exchanges were to outweigh the threat that the system may be subject to gaming.[27] Such a waiver would not be granted unconditionally, however. Rather, similar to certain study area waivers,[28] waivers of the all-or-nothing rule would be granted subject to the condition that the selling price cap LEC shall make a downward exogenous adjustment to its Price Cap Index to reflect the change in its study area. That adjustment is needed to remove the effects of the transferred exchanges from price-capped rates that have been based, in whole or in part, upon the inclusion of those exchanges in the study areas subject to price cap regulation.[29]

13. ***Petition.*** Eastern Oregon and PTI seek waivers of Section 61.41(c)(2) so they may operate as rate-of-return LECs, rather than price cap LECs, after acquiring the 23 exchanges which currently are under price cap regulation. Petitioners argue that the rule's application in this instance is contrary to the public interest and does not serve the purposes for which the rule was adopted. Petitioners further argue that the Commission's two concerns, the threat of cost shifting between affiliates and gaming of the system, are not at issue in this case.[30]

14. ***Discussion.*** We agree with Petitioners that the Commission's first concern underlying the all-or-nothing rule is not applicable in this case. Neither Eastern Oregon nor PTI has an incentive to shift costs between price cap and rate-of-return affiliates, because neither company is seeking to maintain separate affiliates under different systems of regulation. As to the Commission's second concern, we find it implausible that US West could game the system by moving the 23 exchanges back and forth between price caps and rate-of-return regulation,

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26 *LEC Price Cap Reconsideration Order*, 6 FCC Rcd 2637, 2706.

27 *Id.*

28 *See supra* at note 23.

29 *See LEC Price Cap Review Order* at ¶ 330.

30 Joint Petition at 8.

because US West is selling these exchanges and a reacquisition would require a second study area waiver. Moreover, US West cannot transfer the 23 exchanges without removing the rate-increasing effects of these exchanges from the price-capped rates that have been based, in part, upon the inclusion of these exchanges in its Oregon study area.[31]

15. We therefore find there is good cause to grant Eastern Oregon and PTI a waiver of the all-or-nothing rule to permit them to remain under rate-of-return regulation after acquiring the 23 exchanges which currently are under price cap regulation. As noted above, these waivers are subject to the condition that US West shall make a downward exogenous adjustment to its Price Cap Index to reflect the removal of these exchanges from its Oregon study area. For the present, we will continue to regulate Eastern Oregon and PTI as rate-of-return carriers. Because we are waiving Section 61.41(c)(2), they need not withdraw from the NECA pools. We note that, as with any other rate-of-return carriers, Eastern Oregon and PTI may elect price cap regulation in the future if they decide to withdraw from the NECA pools.

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 155(c) and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.291, that the Joint Petition of US West Communications, Inc., Pacific Telecom, Inc. and Telephone Utilities of Eastern Oregon, Inc., d/b/a PTI Communications, for waiver of Part 36, Appendix-Glossary, of the Commission's Rules, 47 C.F.R. Part 36 Appendix-Glossary, and for waiver of Section 61.41(c)(2) of the Commission's Rules, 47 C.F.R. § 61.41(c)(2), IS GRANTED subject to the conditions set forth above.

17. IT IS FURTHER ORDERED that NECA shall not distribute USF assistance exceeding the limit imposed in paragraph 9, *supra*.

FEDERAL COMMUNICATIONS COMMISSION

Kenneth P. Moran

Kenneth P. Moran
Chief, Accounting and Audits Division
Common Carrier Bureau

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[31] *See supra* at ¶ 12.

ORDER NO. 95-526

ENTERED MAY 31 1995

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UP 96

JUN 2 1995

In the Matter of the Joint Application of U S WEST COMMUNICATIONS, INC., and TELEPHONE UTILITIES OF EASTERN OREGON, INC., dba PTI COMMUNICATIONS, for an order authorizing the sale and purchase of certain telephone exchanges.	)	ORDER

DISPOSITION: APPLICATIONS DENIED UNLESS COMPANIES ACCEPT CONDITIONS.

On May 14, 1994, U S WEST Communications, Inc. (USWC), and Telephone Utilities of Eastern Oregon, Inc., dba PTI Communications (PTI), filed a joint application with the Public Utility Commission of Oregon (PUC) requesting that the Commission authorize USWC's sale of 23 exchanges to PTI. The exchanges are indicated on Attachment A to this order.

On June 15, 1994, Allen Scott, a Hearings Officer for the Commission, presided over a prehearing conference in this matter. A schedule for the proceeding was established and other procedural matters resolved.

During August 1994, the Hearings Officer conducted five public forums relating to this sale in Burns, John Day, Heppner, Merrill, and Roseburg, Oregon. PUC staff, representatives of the applicant companies, and other interested persons attended. Staff and the applicants made presentations. Comments from members of the public were received.

An evidentiary hearing was held on January 17, 1995, in Salem. The parties briefed the issues. The record was closed on March 1, 1995.

Condition Relating to Plant Upgrades and Modernization

In its application, PTI filed a schedule outlining modernization plans for the sale exchanges. The plans include matters such as conversion to one party service, digital interoffice toll routes, elimination of open wire, SS7/ISUP trunk signaling, and deployment of a service called CLASS. The schedule contains dates for completion of the upgrading. During this proceeding, PTI offered additional plans for upgrades to local services, remote switches, interoffice facilities, and tandem toll routes. A listing of the various modernization and upgrading plans is in Attachment C to this order. Some aspects of the modernization plan require participation by USWC, notably the upgrade of interoffice facilities in the John Day exchange.

Staff and PTI are in agreement that PTI's *commitment* to make these improvements should be a condition of the sale. However, staff further proposes that failure by the companies to meet the modernization schedule should result in the assessment of a financial penalty. Both PTI and USWC object strenuously to the inclusion of a potential financial penalty in the condition.

Staff's proposed penalty condition with respect to PTI operates as follows. Attachment C lists only a year in which the various projects are to be completed. Staff's proposal would establish a specific date for each project. For 1995 projects, the due date would be nine months after the quarter in which final regulatory approval is granted. That is, if final approval comes by June 30, 1995, then the due date for 1995 projects will be March 31, 1996. Due dates for projects set for later years would be March 31 of the year following that listed in Attachment C. On the other hand, if regulatory approval comes in the quarter ending September 30, 1995, the due date for 1995 projects would be June 30, 1996, and the due date for succeeding years' projects would by June 30 of the year following the year listed in Attachment C.

If PTI fails to meet the deadlines for modernization, a fiscal penalty would be assessed on an annual basis. The penalty amount would be charged to shareholders and distributed to PTI customers. The annual penalty would be equal to a downward adjustment of PTI's return on equity (ROE) by up to 50 basis points. Staff estimates the current impact of a 50-basis-point adjustment would be $436,473. If a penalty is determined and imposed, staff will recommend a method for distributing it to customers.

Staff also proposes that USWC be subject to the penalty condition. If USWC fails to meet its obligations relating to the modernization plan, it would be required to share in the penalty imposed on PTI by paying PTI a percentage of the penalty. Staff would propose a sharing of the penalty based on an assignment of responsibility for failure to meet the modernization plans.

Disposition

The Commission concludes that the proposed conditions are appropriate and will be attached to our approval of this transaction. In reviewing this transaction, we are attempting to represent the interests of the ratepayers. As staff correctly points out, the most credible argument in favor of a finding that this transaction is in the public interest lies in PTI's ability and willingness to upgrade the services in the sale exchanges. PTI and USWC both aver that PTI, because of its rural focus, will work more quickly to provide upgraded facilities to the rural outlying areas than would USWC, which is engaged in vigorous competitive battles in more populated areas. PTI made specific representations that it would carry out particular projects by a certain date. If those proposals are carried out as proposed, the customers in the sale exchanges will have benefited significantly. However, if they are not carried out, the public interest claim would be put in serious question.

We note that the comments offered at the public forums make clear that the modernization and upgrades promised by the companies are a major basis for the general support voiced by the public for this transaction. It is therefore appropriate that the Commission do what it can to make certain the plans are carried out as proposed and that the public benefits as promised by applicants. Without a provision such as that proposed by staff, we would have no recourse in the unlikely event the applicants failed to perform as they have represented.

PTI and USWC present several arguments against the imposition of this condition. PTI points out, for example, that completion of the plans on schedule is to some extent subject to external factors. We agree. Staff, on brief, acknowledges that the companies should have the opportunity to demonstrate that any failure to meet the schedule is a result of factors beyond the company's control. Although that refinement of the condition is not contained in staff's testimony, we view it as appropriate and incorporate it in our condition.

PTI argues that it has not had an adequate opportunity to examine all of the physical facilities involved and thus cannot guarantee the time frame set out in the proposals. We do not find this a sound argument. PTI was responsible for making the specific proposals, including the time frame involved. These are part of its application and proposal in this matter and constitute an important basis for granting the application. We see nothing wrong with holding it to the representations that it made.

The companies also allude to their good "track records" for doing work that they propose. They imply that the condition will somehow reflect negatively on them and may, in PTI's view, constitute an "insult" to the company. The Commission has no reason to doubt the sincerity of the companies or their ability to perform as they have represented. Our imposition of this condition is not intended to reflect negatively on either company. We are not persuaded, however, that the prior track record of the companies is a significant argument against this condition. The simple fact is that if they perform in consonance with their track records and do what they have proposed, the penalty provisions will never come into play.

USWC raises a legal issue. It questions whether the Commission actually has the authority to impose a penalty for failure by a utility to provide modernization or upgrading. We are convinced, however, that consummation of the deal by the companies with this condition attached will constitute an enforceable agreement between the companies and the Commission regarding the penalty provision. We are hopeful, of course, that the issue will never be tested because the companies meet their obligations and promises under the agreement.

The companies raise some issues relating to procedural matters which we need to address. First, they note that in staff's briefs, the term "joint and several" liability for the penalties is used. They point out that that concept seems to be at odds with staff's testimony, which suggests that any penalty should be shared by the companies in proportion to their actual fault. We agree that the original proposals by staff for a sharing based on blame is sound and an appropriate basis for imposition of a penalty under these circumstances. We conclude that the term "joint and several" was not meant in any technical sense and we do not incorporate it in the condition we adopt.

The companies also raise procedural issues relating to determination and apportionment of fault. It is the Commission's conclusion that if our staff believes that a significant deviation from the schedule as set out in this order has occurred, staff will file a request with the Commission to impose a penalty on PTI (and USWC as necessary). We say a "significant" deviation because it is our belief that nothing would be served by imposing a penalty for a very minor departure from the schedule. We also conclude that any penalty imposed would be proportionate to the magnitude of the deviation. Staff suggests as much in its testimony when it calls for a penalty of "up to" the 50 basis point maximum.

If staff makes a request for a penalty, the company or companies would have the opportunity for an administrative hearing which would provide a record upon which the Commission could make its determination of a penalty. The companies point out that this process could be cumbersome and expensive. That may indeed be true in some circumstances. In others it might not be such a difficult task. Of course, any contested case is potentially complex and difficult, especially where a penalty is involved. We do not view that potential difficulty as a basis for abandoning worthwhile policies. Moreover, the companies have it within their power to avoid any such process by meeting the schedule that they have proposed.

EXHIBIT PTIC-K

03/04/97 14:31

JUL 1994 RECEIVED OPUC SALEM

PTIC'S MODERNIZATION SCHEDULE FOR OREGON SALE EXCHANGES

ange	Conversion to One-party[1]	Digital Interoffice Toll Routes	Elimination of Open Wire	SS7/ISUP Trunk Signaling	Deployment of CLASS
	Completed	1995	n/a	1998	1998
nza	1995	Existing	1995-96	1997	1998
s	Completed	Existing	n/a	1996	1998
s Valley	Completed	Existing	n/a	1998	1998
n	1995	Existing	n/a	1997	1998
ee	1995	Existing	n/a	Remote	Remote
	Completed	Existing	n/a	Remote	Remote
hrist	Completed	1999	n/a	1997	1998
le	1995	Existing	n/a	1996	1998
rnment Camp	Completed	Existing	n/a	1998	1998
ington	1995	Existing	n/a	Remote	Remote
ner	Completed	Existing	1995-96	1996	1998
e	Completed	Existing	n/a	Remote	Remote
ell	Completed	1996	n/a	1996	1998
n Day	1995	1996	1995-96	1996	1998
ington	1995	Existing	n/a	Remote	Remote
in	1995	Existing	1995-96	1997	1998
rill	Completed	Existing	1995-96	1997	1998
ney	1997-98	Existing	n/a	Remote	Remote
th Powder	1995	1996	1995-96	1996	1998
th Umpqua	Completed	Existing	1995-96	Remote	Remote
eca	Completed	1996	n/a	Remote	Remote
dd	1995	Existing	n/a	1996	1998

[1]Assumes 1995 is first year of PTI operation of sale exchanges and USWC completes 1994 upgrades as scheduled.

:\sale\oregon2.lst

5-526

Staff/8 Wolf/3

LATHAM & WATKINS 015/02

In addition to the modernization plans shown in Exhibit Staff/8, Wolf/3, PTI has ~~also~~ indicated that it intends to pursue a number of other upgrades. According to the information received in response to Staff Request number 10, PTI plans to make the following upgrades to local services, remote switches, inter-office facilities and tandem toll routes:

1. Re-home the Durkee and Huntington remote offices to North Powder in 1996.
2. Evaluate the feasibility of rehoming the Heppner remote off the DMS-10 in Boardman within 18 months.
3. Eliminate all open wire within five years.
4. Eliminate "C" wire.
5. Upgrade Harney County to one party service by 1998.
6. Evaluate existing plant design and upgrade to PTI's "Service Are Concepts" for future deployment of Enhanced Services, Digital Loo and ISDN as markets evolve.
7. Inventory sale exchange outside plant for service and maintenanc problems. Replace outside plant when economies can be achieved.
8. Replace analog systems as service needs arise.
9. Inspect and replace systems as needed to meet PUC safety standard
10. Offer CLASS services to the acquired exchanges.
11. Upgrade all analog inter-office trunk facilities to digital inter-offi facilities.

NRTA · NTCA · OPASTCO ·

"Representing America's Local Exchange Carriers"

UNITED STATES TELEPHONE ASSOCIATION

February 25, 1997

The Hon. Frank H. Murkowski
U.S. Senate
706 Hart Senate Office Building
Washington, DC 20510

Dear Senator Murkowski:

The Telecommunications Act of 1996 requires "sufficient" high cost support to ensure "just reasonable and affordable rates," "reasonably comparable" rates and services for rural and urban customers and nationwide information access. Our associations and our rural telephone Company membership worked closely with Congress to develop these requirements, and we are pleased with the Act's commitment to affordable modem service for rural areas in the new era of telecommunications competition. Charged with implementing these national policies, the Federal Communications Commission (FCC) will soon decide the future of universal telephone service. Unfortunately, a Joint Board of federal and state regulators -- including three of the four sitting FCC Commissioners -- has recommended that the FCC adopt a policy that could increase rates, reverse economic development and stall telecommunications progress in the rural areas of the nation.

We are writing to you to ask your help in convincing the FCC to modify the Joint Board's recommendation on universal service for rural telephone companies, including the rural telephone companies in your state. The Joint Board recommendation would freeze federal support for affordable telephone rates at past investment levels per line for rural telephone companies, then transition to a new system which would not be fully implemented until well after the turn of the century.

- The freeze would chill any incentive for rural telephone companies to invest in new infrastructure which would require a significant increase in investment per customer.
- Companies with commitments to upgrade infrastructure, or under a state mandate to do so, will have to request rate increases in order to maintain financial stability.
- The problems are particularly acute for those rural companies that have recently acquired areas that had previously been underserved and have commitments to substantially upgrade the facilities. This would lead to outdated facilities, increasing local rates, or both.

The Joint Board recommendation would also cut off support for most business lines and all second residences or second lines in residences in high cost areas.

- This cut off adds greatly to the cost of internet usage for rural households and businesses that use a second line for their computer hookup.
- Telecommunications services, so vital as an incentive for businesses to locate or remain in rural areas, would increase greatly in price.
- Figuring out which lines fit in the supported versus an unsupported category would be an enormous burden -- if not impossible.

National Rural Telecom Association
1 Massachusetts Ave., N.W.
Suite 800
Washington, D.C. 20001
(202) 628-8210

National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 298-2300

Post-it® Fax Note 7671	Date 2/27	# of pages ▶ 2
To David Zesiger	From John Jones	
Co./Dept.	Co. Century	
Phone #	Phone # 318-203-1583	
Fax # 202 2230358	Fax #	

Our four national telephone associations, representing all of the rural telephone companies in the nation, have proposed an alternative transition plan to the FCC that would accomplish the Act's objectives at a negligible additional cost and without creating the damaging results the joint board approach does. Representatives from our four associations -- along with our rural telephone company members -- would be pleased to meet with you or your staff to explain our plan and discuss this vital issue.

Your support for a fair universal service transition plan for rural telephone companies and rural consumers is vital to the future rural economic development of your state. You can make your views part of the FCC's record by writing an "ex parte" letter to Chairman Reed Hundt and Commissioners James Quello, Susan Ness and Rachelle Chong now, while the record remains open. You should refer to CC Docket No. 96-45. For more information on how to protect your rural constituents on this issue, please contact any one of the following:

Margot Humphrey, NRTA, 202-467-5700
Shirley Bloomfield, NTCA, 202-298-2357
Lisa Zaina, OPASTCO, 202-659-5990
Janet Hale, USTA, 202-326-7251

We urge you to let the Federal Communications Commission know that freezing universal service support and terminating support for many high cost lines will jeopardize rural telecommunications development in your state and make a mockery of the balanced telecommunications policy Congress enacted in the 1996 Act.

Sincerely yours,

John F. O'Neal
General Counsel
National Rural Telecom Association

Michael E. Brunner
Executive Vice President
National Telephone Cooperative Association

John Rose, President
Organization for the Promotion and Advancement of Small Telecommunications Companies

Roy Neel, President & CEO
United States Telephone Association

Attachment

PTI
PACIFIC TELECOM, IN

1726 M Street North
Suite
Washington, D
20036-2

Teleph
202-223-5

October 21, 1994

Mr. A. Richard Metzger
Deputy Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: AAD 94-27

Dear Richard:

Pacific Telecom, Inc., appreciates very much the time and attention which you and other members of the Commission gave to our presentation on Colorado service issues this week. We are taking this opportunity to respond immediately to the questions and concerns raised in our conversations, and to supply the additional information requested in connection with our pending waiver application.

I believe we are all agreed that the need of the people in the affected service territories is quite genuine. At the beginning of our interim service upgrade program (pursuant to contract with U S WEST), there were approximately 1,000 held service orders for initial or minimally improved local service. We have addressed and satisfied more than half of those requests to date; the remainder will be fulfilled by year-end. These orders, overwhelmingly, address the need for basic telecommunications, in terms either of first-time interconnection to the network or change from multi-party to single party service. This is, clearly, not an instance of fiber to the curb -- in many of these areas, there is no curb. As such, we believe the Commission could find no clearer example of the application of Universal Service funding in a manner wholly congruent with the letter, spirit, and purposes of the Fund.

The genuineness of that need, however, results in a substantial increase in the future demand upon the Fund. PTI recognizes the Commission's concern for the size of the increase and its implications for future policy decisions concerning universal service. We have attempted to put those concerns in an appropriate context in our discussions, particularly as to the following considerations:

(1) Utilization of USF funds. As Attachment A indicates, the increased USF requirements must be placed in the context of PTI's five-year plan for capital improvements, scheduled to exceed $88 million dollars. As noted, these capital improvements will bring our rural Colorado network to a level generally enjoyed by residents in the more urban areas of the state.